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**FILED**  
DISTRICT COURT OF GUAM

MAY 23 2008 P.D.

JEANNE G. QUINATA  
Clerk of Court

9  
10 **IN THE UNITED STATES DISTRICT COURT**

11 **DISTRICT OF GUAM**

12 ROBERT J. DEL ROSARIO,

13 Plaintiff,

14 vs.

15 JAPAN AIRLINES INTERNATIONAL  
16 CO., LTD.,

Defendant.

00028 R.D.  
CIVIL CASE NO. CIV04-~~000028~~

MEMORANDUM IN SUPPORT OF  
PRIORITY OF HAYAO SUEHIRO  
CLAIM OVER CLAIM OF GREGORY  
MILLER, D.C.; CERTIFICATE OF  
SERVICE

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18 At the April 4, 2008 hearing before this Court, following the concession of  
19 Attorney Mark Williams as to the priority of Hayao Suehiro's ("Suehiro") lien over the  
20 liens of Mr. William's clients, counsel for Suehiro addressed the priority of Suehiro's  
21 lien over the lien of Gregory Miller, D.C. ("Miller").

22 Thereafter, the Court indicated that upon the Court's issuing Judgment, and  
23 following the tender of \$175,000.00 by Japan Airlines International Co., Ltd. ("JAL"),  
24 minus \$76.50 in appellate costs, to the Clerk of Court, the Court would then issue an  
25 Order to disburse \$38,384.99 of the tendered \$175,000.00 to the Law Offices of  
William L. Gavras and disburse the remaining monies to Suehiro; provided, however,

**ORIGINAL**

1 that with respect to the remaining sum of funds to be disbursed to Suehiro, the Court  
2 might determine to hold a small portion of said funds, in the amount of Miller's claim or  
3 less, in reserve until the Court could determine whether Miller's claim, or any portion of  
4 Miller's claim, had priority over the secured interest of Suehiro.

5 For the benefit of the Court, counsel for Suehiro hereby restates, in writing, the  
6 application of Guam law to the facts of this matter, which law and facts make clear that  
7 Suehiro's lien has priority, and is superior, to that of Miller and makes absolutely clear  
8 that Miller's claim has no priority over the secured interest of Suehiro.

9 First, 18 G.C.A. §35401 provides that "Other things being equal, different liens  
10 upon the same property have priority according to their time of creation...." The  
11 Suehiro lien was created and attached on February 18, 2003. See, Exhibit "2", March  
12 24, 2008 filed Affidavit of Michael D. Flynn, Jr. The Miller lien was created and  
13 attached on April 17, 2003—after the Suehiro lien was created and attached. See,  
14 March 27, 2008 filed Claim of Gregory Miller. As such, the Suehiro lien is superior in  
15 priority to the Miller lien by virtue of the date and time on which the Suehiro lien was  
16 created and attached to the settlement proceeds.

17 Second, 13 G.C.A. §9312(5)(a) provides that "Conflicting security interests rank  
18 according to priority in time of filing or perfection." Further, 13 G.C.A. §9312(5)(b)  
19 provides that "So long as conflicting security interests are unperfected, the first to  
20 attach has priority." Suehiro's lien was filed and perfected as to the world on April 13,  
21 2007. See, Exhibit "4" and Exhibit "5", March 24, 2008 filed Affidavit of Michael D.  
22 Flynn, Jr. On the other hand, Miller never perfected his lien. As such, the Suehiro lien  
23 is superior in priority to the Miller lien by virtue of the date and time on which the  
24 Suehiro lien was perfected in the settlement proceeds.

1 Third, Suehiro reduced his claim to Judgment and perfected the Judgment  
2 through filing with this Court. Miller never reduced his claim to Judgment. In addition,  
3 Miller asserts a claim based on services allegedly first performed on October 10, 2002,  
4 almost six (6) years ago. Miller's claim faces, at the very least, an underlying defense  
5 on the 4-year statute of limitations, under 7 G.C.A. §11303.

6 Finally, there is no Guam statute or case law which moves Miller's tardily  
7 created and unperfected lien to a position in priority above Suehiro's perfected and  
8 earlier attached lien. As such, under Guam law, Suehiro must receive the entire  
9 remaining amount of the JAL tendered \$175,000.00, following the application of  
10 \$76.50 to JAL appellate costs and disbursement of \$38,384.99 to the Law Offices of  
11 William L. Gavras.

12  
13 **CONCLUSION**

14 Based on the above-referenced law and facts of this matter, upon JAL's tender  
15 of the \$175,000.00 in settlement proceeds, minus \$76.50, to the Court, Hayao Suehiro  
16 respectfully requests the Court to immediately order \$38,384.99 of the settlement  
17 proceeds to be disbursed to the Law Offices of William L. Gavras and the entire  
18 remaining amount be immediately disbursed to Hayao Suehiro.

19 Respectfully submitted this 23<sup>rd</sup> day of May, 2008.

20 **MAHER • YANZA • FLYNN • TIMBLIN, LLP**  
21 Attorneys for HAYAO SUEHIRO

22  
23 By:

24   
25 **MICHAEL D. FLYNN, JR., ESQ.**

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 101 Salisbury Street  
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Dated this 23<sup>rd</sup> day of May, 2008.

By: Michael D. Flynn, Jr.  
MICHAEL D. FLYNN, JR., ESQ.